

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Mary Egbertson as trustee for the next-of-kin of Nathan A. Nieber, Deceased,

ORDER

Plaintiff,

v.

Civil No. 05-466 (JNE/SRN)

Ronald L. Halverson and Michael L. Wehking,

Defendants.

Mary E. Egbertson as trustee for the next-of-kin of Nathan A. Nieber,

Plaintiff,

v.

Civil No. 04-5066 (JNE/SRN)

United States of America,

Defendant.

Michael L. Wehking and Kathy Wehking,

Plaintiffs,

v.

Civil No. 05-863 (JNE/SRN)

Ronald L. Halverson,

Defendant.

Angela K. Amundson, Judith A. Berg, and
Scott D. MacDonald,

Plaintiffs,

v.

Civil. No. 05-004 (JNE/SRN)

United States of America,

Defendant.

Michael L. Wehking and Kathy Wehking,

Plaintiffs,

v.

Civil No. 05-070 (JNE/SRN)

United States of America,

Defendants.

Angela K. Amundson, Judith A. Berg, f.k.a.
Judith Strain, and Scott D. MacDonald,

Plaintiffs,

v.

Civil No. 05-2052 (JNE/SRN)

Ronald L. Halverson and Michael L. Wehking,

Defendants.

Sharon Van Dyck, on behalf of Plaintiff Mary Egbertson

Gregg Nelson, on behalf of Plaintiffs Michael L. Wehking and Kathy Wehking

Walter Sawicki, on behalf of Plaintiffs Angela K. Amundson, Judith A. Berg, and Scott D. MacDonald

Perry Sekus, Assistant United States Attorney and John Brossart, Minnesota National Guard Staff
Judge Advocate, on behalf of Defendant United States of America

The above-entitled matter comes before the Court upon the Report and Recommendation

dated August 31, 2005 and the Amended Report and Recommendation dated October 13, 2005 of United States Magistrate Judge Susan Richard Nelson. The parties have either not filed timely objections or have indicated that they do not object to the August 31, 2005 Report and Recommendation. Magistrate Judge Nelson's Amended Report and Recommendation extends her August 31, 2005 recommendations to motions pending in a related case removed to federal court on September 2, 2005. Magistrate Judge Nelson's Amended Report and Recommendation indicates that the applicable parties waive their right to object to the additional recommendations found in the October 13, 2005 Amended Report and Recommendation.

Based on the Report and Recommendation and Amended Report and Recommendation of Magistrate Judge Nelson, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. In Egbertson v. Halverson, et al., Civ. No. 05-466:
 - a. Defendants' Motion for Substitution (Doc. No. 2) is **DENIED without prejudice**;
 - b. Defendants' Motion to Dismiss (Doc. No. 7) is **DENIED without prejudice**.
 - c. Plaintiff's Motion for Review of U.S. Attorney's Certification, for Discovery, and/or for an Evidentiary Hearing, and for Remand (Doc. No. 20) is **GRANTED in part and DENIED in part without prejudice** as set forth herein;
2. In Egbertson v. United States, Civ. No. 04-5066, Defendants' Motion to Dismiss (Doc. No. 8) is **DENIED without prejudice**;

3. In Wehking et. al. v. Halverson, Civ. No. 05-863:
 - a. Defendants' Motion for Substitution (Doc. No. 2) is **DENIED without prejudice**;
 - b. Defendants' Motion to Dismiss (Doc. No. 6) is **DENIED without prejudice**; and
 - c. Plaintiff's Motion for Review of U.S. Attorney's Certification, for Discovery, and/or for an Evidentiary Hearing, and for Remand (Doc. No. 10) is **GRANTED in part and DENIED in part without prejudice** as set forth herein;
4. In Amundson et al. v. Halverson, et al., Civ. No. 05-2052:
 - a. Defendants' Motion for Substitution (Doc. No. 4) is **DENIED without prejudice**;
 - b. Defendants' Motion to Dismiss (Doc. No. 7) is **DENIED without prejudice**; and
 - c. Plaintiffs' Motion for Review of U.S. Attorney's Certification, Discovery and Evidentiary Hearings, and Remand (Doc. No. 10) is **GRANTED in part and DENIED in part without prejudice** as set forth herein;
5. In Amundson et. al. v. United States, Civ. No. 05-004, Defendants' Motion to Dismiss (Doc. No. 8) is **DENIED without prejudice**;
6. In Wehking et. al v. United States, Civ. No. 05-070, Defendants' Motion to Dismiss (Doc. No. 5) is **DENIED without prejudice**; and

7. The Clerk of Court is instructed to docket this Order in each of the above-captioned cases.
8. The parties are ordered to, without delay, commence discovery, using any means authorized by the Federal Rules of Civil Procedure, limited to the scope of employment and “incident to service” issues discussed herein and in the parties’ briefs.

DATED: October 24, 2005

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Court Judge